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Prisoners' Right to Rehabilitation: Micro and Macro Level Indicators for the Assessment of the Fulfilment of States' Positive Obligation

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Abstract

The right to rehabilitation for prisoners is a fundamental human right recognized under international standards, imposing a positive obligation on states to ensure its fulfilment. This Article undertakes an in-depth examination of prisoners' rehabilitation through both micro and macro lenses, examining individual experiences alongside broader societal impacts. Drawing on insights from scholars like Edgardo Rotman and Amanda Ploch, contrasting rehabilitation models are explored, highlighting tensions between institutional discipline and individual empowerment. At the macro level, rehabilitation addresses socio-economic inequalities and collective benefits, yet may overlook individual dignity from a human rights perspective. In contrast, Rotman's humanistic model emphasizes personal insight, dialogue, and prisoners' intrinsic rights at the micro level, fostering empowerment and a sense of responsibility. A dual perspective—from macro policy indicators to micro-level prisoner experiences—is crucial for a nuanced evaluation of rehabilitation efficacy. This exploration underscores the need for effective execution and resource allocation to uphold principles of human dignity and ensure the right to rehabilitation becomes a tangible reality for every individual within the criminal justice system.

Keywords: Rehabilitation; prisoners' rights; prisoners' dignity; individualization of treatment; rehabilitative programs

A. Introduction

An inherent feature of rules is their violation. For relatively long, states have taken over the centralized enforcement of some such violations. How states punish and discipline those who violate rules has fluctuated over time, but at present, nationally, regionally, and internationally, the function of punishment has been to reintroduce rulebreakers to society, ideally with a learned aversion to future rule-breaking.¹ This body of rules, guidelines, and other legal instruments that constitute prisoners' right to rehabilitation animates this inquiry. If prisons are expected to serve other functions than mere containment of violators, what such functions are there and how are they encoded?

Rehabilitation is part of the long trajectory where prisons transmute, at least in part, from institutions of isolation to sites of individual growth, risk reduction, and redemption, even if only

¹A *locus classicus* for emergence of contemporary forms of punishment is MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON (Alan Sheridan trans., 2d ed. 1995). For wider uptake of Foucault's work, see Nancy Luxon, Michel Foucault, *Discipline and Punish*, in THE OXFORD HANDBOOK OF CLASSICS IN CONTEMPORARY POLITICAL THEORY (Jacob T. Levy ed., 2015).

idealized ones. Also, the right to rehabilitation of a prisoner has been a source of passionate debate for a relatively long time. Writing in 1974, Peter Dwyer and Michael Botein argued that “prisoners need rehabilitation in order to reclaim their rightful roles in society,” a cause that they considered an unfulfilled right at the time.² Since then, prisoners’ right to rehabilitation has gained more formal recognition, especially in the case law of the European Court of Human Rights (“ECtHR”).³

While historically and traditionally criminologists have referred to the various aims and functions of punishment, such as retribution, prevention, public protection, and rehabilitation, in recent years rehabilitation as a right has trumped all others.⁴ Rehabilitation has become the sole human rights adherent form of punishment, treating prisoners with humanity. Other forms of punishment turn prisoners into instruments and a means for achieving objectives of others, which is seen incompatible with their inherent human dignity.⁵ In short, depriving a person of their freedom without attempting to rehabilitate them would be inhuman.⁶

Yet, in general, imprisonment has adverse effects and commonly fails to rehabilitate offenders.⁷ The practical experiences of states highlight persistent concerns over the fulfilment of prisoners’ right to rehabilitation.⁸ If, as is suggested, such a right exists, it imposes duties on states alongside a range of obligations that are deemed instrumental to the fulfilment of rehabilitation. However, as data indicates, most states fail to uphold their customary and statutory duties. There are alarmingly high rates of reoffending. Additionally, criminal recidivism remains notably elevated among specific groups of offenders.⁹ These high rates of recidivism raise questions about whether penal institutions themselves often undermine rehabilitation efforts, thereby perpetuating cycles

²Peter Dwyer & Michael Botein, *The Right to Rehabilitation for Prisoners—Judicial Reform of the Correctional Process*, 20 N.Y.L.F. 273, 273 (1974).

³See, e.g., Netanel Dagan, *The Janus Face of Imprisonment: Contrasting Judicial Conceptions of Imprisonment Purposes in the European Court of Human Rights and the Supreme Court of United States*, 21 CRIMINOLOGY & CRIM. JUST. 633, 633 (2021) (accounting the divergent developments in Europe and in the U.S.).

⁴See Murray v. Netherlands, App. No. 10511/10, para. 70 (Apr. 26, 2016), <https://hudoc.echr.coe.int/eng?i=001-162614>.

⁵The understanding of human dignity presented in the Article is grounded in the ideas of Immanuel Kant, who played a pivotal role in the development of this concept. See IMMANUEL KANT, KANT: THE METAPHYSICS OF MORALS (Mary Gregor ed. & trans., 1996).

⁶See, e.g., Vinter v. United Kingdom, 2016-III Eur. Ct. H.R. 317, para. 113 (2013), <https://hudoc.echr.coe.int/eng?i=001-122664>; Murray, App. No. 10511/10 at para. 101. See generally Natasa Mavronicola, *Inhuman and Degrading Punishment, Dignity, and the Limits of Retribution*, 77 MOD. L. REV. 277 (2014); Natasa Mavronicola, *Crime, Punishment and Article 3 ECHR: Puzzles and Prospects of Applying an Absolute Right in a Penal Context*, 15 HUM. RTS. L. REV. 721 (2015).

⁷Recommendation Rec(2003)22 of the Committee of Ministers to Member States on Conditional Release (Parole), COUNCIL EUR. (Sept. 24, 2003), <https://search.coe.int/cm?i=09000016805df03f>.

⁸Information on the fulfilment of various aspects of prisoners’ right to rehabilitation in Council of Europe member states is available in the reports of the visits carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”). See generally EUR. COMM. FOR PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, <https://www.coe.int/en/web/cpt> (last visited Feb. 16, 2025).

⁹Comprehensive global data on recidivism rates remains unavailable. While many countries track and analyze recidivism, inconsistencies in data collection practices and methodologies across jurisdictions mean their efforts often fall short, and the absence of standardized definitions further complicates meaningful comparisons. Some jurisdictions narrowly define recidivism, limiting it to reimprisonment, while others adopt broader criteria, including reconvictions or even arrests. Furthermore, certain countries exclude minor offenses, such as misdemeanors or traffic violations, from their calculations. Variability in follow-up periods—ranging from six months to five years—further complicates the comparability of recidivism data. Despite these challenges, existing studies consistently report high recidivism rates among specific offender groups. For instance, individual countries have documented reoffending rates exceeding seventy percent. See Seena Fazel & Achim Wolf, *A Systematic Review of Criminal Recidivism Rates Worldwide: Current Difficulties and Recommendations for Best Practice*, 10 PLOS ONE 2, 4 (2015); UN OFF. ON DRUGS & CRIME, INTRODUCTORY HANDBOOK ON THE PREVENTION OF RECIDIVISM AND THE SOCIAL REINTEGRATION OF OFFENDERS 7 (2012). More recent research highlights additional patterns, with recidivism data from thirty-three countries showing two-year reconviction rates between eighteen percent and fifty-five percent for released prisoners and ten percent to forty-seven percent for individuals serving community sentences. See, e.g., Denis Yukhnenko, Leen Farouki & Seena Fazel, *Criminal Recidivism Rates Globally: A 6-Year Systematic Review Update*, 88 J. CRIM. JUST. 1, 1 (2023).

of crime and incarceration.¹⁰ If a prisoner has a right to rehabilitation, does such right entail a right to expect positive outcomes and a concomitant duty of a state to actively seek such outcomes?

The Article argues that there is an internationally recognized right to rehabilitation that has a fairly substantive content. This right has been further expanded regionally, especially within the European human rights system. Yet, what is the content of such a right if the material consequences of prison life still lead to a life of crime for most prisoners? It is argued that a right to rehabilitation allows a prisoner to have access to a certain form of prison life, but it has no substance. For as long as processes are minimally respected, a state fulfils its obligations, even if the outcome would be wanting on both an individual and collective level. This prompts a deeper examination of the tangible efforts made by states to honor and implement the right to rehabilitation for individuals within their penal systems. Keeping this in mind, the Article sets first to elucidate the components of the right to rehabilitation within the international legal system and outlines the specific actions individual states must undertake to fulfil their positive obligation.

The focus of analysis is on an international level in addition to a European level. What are the normative underpinnings of a right to rehabilitation that all states ought to respect, and how do those differ from regional rights recognized within the European human rights system? These requirements are outlined on two different levels: on the level of the prison system and on the level of an individual prisoner, titled macro and micro levels, respectively. I will show that while a meaningful right to rehabilitation can occur only on a micro-level, much of the debate on right to rehabilitation is entertained on a macro-level, which, it is argued, is the reason why the outcomes of rehabilitation are wanting even in states that invest substantive material resources to rehabilitation. I conclude that a formal definition of rehabilitation emphasizes institutions over individuals, which, *in casu*, enforcement of rights cannot address.

B. Prisoners' Right to Rehabilitation Under the United Nations System

The United Nations recognizes the importance of rehabilitation and has set standards to promote it. The International Covenant on Civil and Political Rights ("ICCPR") stipulates on prisoners' right to rehabilitation. According to Article 10(3) of the ICCPR, the "penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."¹¹ The United Nations Human Rights Committee ("HRC") has further clarified the content of rehabilitation through General Comment 21, emphasizing that "treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule No penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner."¹² Edgardo Rotman

¹⁰There is no clear causal link between incarceration and reoffending, as numerous factors, including psychosocial determinants, influence recidivism. For example, punishment experiences can either reduce future criminal involvement through rehabilitation or exacerbate it due to social stigma. One of the recent works by Charles E. Loeffler and Daniel S. Nagin analyzes existing U.S. and non-U.S. studies, finding that most studies show little impact of incarceration on recidivism. However, some studies reveal both positive and negative effects. Negative effects, such as reduced recidivism, are observed in contexts where rehabilitation is emphasized, while criminogenic effects are more common in settings that lack such programs. See Charles E. Loeffler & Daniel S. Nagin, *The Impact of Incarceration on Recidivism*, 5 ANN. REV. CRIMINOLOGY 133, 133 (2022). Manudeep Bhuller and his colleagues demonstrate that rehabilitative-focused incarceration can prevent reoffending, with Norway's prison system serving as an example. This system effectively encourages employment and reduces crime through rehabilitative job training programs, illustrating how a rehabilitation-oriented penitentiary system can influence recidivism data. See generally Manudeep Bhuller, Gordon B. Dahl, Katrine V. Løken & Magne Mogstad, *Incarceration, Recidivism, and Employment*, 128 J. POL. ECON. 1269 (2020).

¹¹International Covenant on Civil and Political Rights, art. 10(3), Dec. 16, 1966, 999 U.N.T.S. 171 (entering into force Mar. 23, 1976) [hereinafter ICCPR].

¹²CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty), paras. 4, 10 (Human Rights Comm. 44th Sess., Apr. 10, 1992).

noted already in the 1980s that prisoners' right to rehabilitation was one of the acknowledged principles of customary international law.¹³

Article 10(3) does not specify what are the necessary and sufficient measures states need to uphold in their duties to rehabilitate prisoners. Therefore, states have broad discretion in fulfilling this duty.¹⁴ However, HRC has enumerated some of the elements that belong to rehabilitation, such as provision of teaching, education and re-education, vocational guidance and training, and work programs inside the penitentiary establishment.¹⁵ Also, the General Comment highlights "how convicted persons are dealt with individually and how they are categorized, the disciplinary system, solitary confinement and high security detention, and the conditions under which contacts are ensured with the outside world (family, lawyer, social and medical services, and non-governmental organizations)."¹⁶

The individual complaints in accordance with the Optional Protocol, which allows for individual claims against a state before the HRC, provide further clarification on the content of Article 10(3). In general, there are few Optional Protocol cases, and establishing a state's failure to uphold its duties to rehabilitate has proven to be difficult.¹⁷ Nowak mentions that the principles of human treatment and respect for human dignity set forth in Article 10(1) are indispensable prerequisites to the social rehabilitation of offenders.¹⁸ In *Kang v. Korea*, HRC declared thirteen years of solitary confinement due to political opinion a violation of both "[A]rticle 10, paragraph 1, protecting the inherent dignity of [Kang], and of paragraph 3, requiring that the essential aim of detention be reformation and social rehabilitation."¹⁹ While the HRC has found, for example in *Quliyev v. Azerbaijan*, a violation of the right to be treated with humanity and respect for the inherent dignity of the human person, it refused to examine separately claims arising under Article 10(3).²⁰ In earlier cases, such as *Whyte v. Jamaica*, *McTaggart v. Jamaica*, and *Lewis (Neville) v. Jamaica*, the HRC found equally that the conditions of pre-trial detention and detention constituted a violation of Article 10(1), but rejected claims related to Article 10(3) and found them inadmissible.²¹ Even when the Committee has assessed the purpose of detention to be that of breaking prisoners physically and psychologically, as in *Cariboni v. Uruguay*, it has not resorted to Article 10(3), but rather found violations in Articles 7 and 10(1).²²

¹³Edgardo Rotman, *Do Criminal Offenders Have a Constitutional Right to Rehabilitation?*, 77 J. CRIM. L. & CRIMINOLOGY 1023, 1061, 1068 (1986).

¹⁴MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 253–54 (2d rev. ed. 2005).

¹⁵CCPR General Comment No. 21, *supra* note 12, at para. 11.

¹⁶*Id.* at para. 12.

¹⁷See SARAH JOSEPH, JENNY SCHULTZ & MELISSA CASTAN, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 325, 328 (3d ed. 2013). In total, the Human Rights Committee considered twelve cases under Article 10(3). Among them, in six cases, the Human Rights Committee declared the issues inadmissible, mostly because the authors failed to substantiate them adequately for admissibility purposes. In four cases, the Committee found violations and unlawful interference with prisoners' rights to reformation and social rehabilitation. In one case, the Human Rights Committee did not find a violation. In another case, the Committee found a violation of Article 10, paragraph 1. In light of this finding, the Committee did not separately examine any possible claims arising under Articles 7 or 10(3) in that regard.

¹⁸NOWAK, *supra* note 14, at 254.

¹⁹*Kang v. Korea*, Commc'n No. 878/1999, Human Rights Comm., U.N. Doc. CCPR/C/78/D/878/1999, para. 7.3 (2003); See also *Brough v. Australia*, Commc'n No. 1184/2003, Human Rights Comm., U.N. Doc. CCPR/C/86/D/1184/2003, para. 9.4 (2006).

²⁰*Quliyev v. Azerbaijan*, Commc'n No. 1972/2010, Human Rights Comm., U.N. Doc. CCPR/C/112/D/1972/2010, para. 9.2 (2014).

²¹*Whyte v. Jamaica*, Commc'n No. 732/1997, Human Rights Comm., U.N. Doc. CCPR/C/63/D/732/1997, paras. 7.7, 9.3, 9.4 (1998); *McTaggart v. Jamaica*, Commc'n No. 749/1997, Human Rights Comm., U.N. Doc. CCPR/C/62/D/749/1997, paras. 6.4, 8.5–8.7 (1998); *Lewis v. Jamaica*, Commc'n No. 708/1996, Human Rights Comm., U.N. Doc. CCPR/C/60/D/708/1996, paras. 6.7, 8.5, 9 (1996).

²²*Cariboni v. Uruguay*, Commc'n No. 159/1983, Human Rights Comm., U.N. Doc. CCPR/C/OP/2 at 189, paras. 2.3, 10 (1987).

Arguably, the Committee might be seen here following Rawlsian lexical ordering in its assessment. If it finds a state to be in violation of its duty to uphold inherent humanity and dignity of prisoners, such a system is an anathema to rehabilitation of prisoners without there being a need for it to declare such violation. This stands in contrast to the following cases where the Committee has found a violation of Article 10(3). In those cases, the penitentiary system on both individual and systemic level respects the inherent humanity and dignity of prisoners, but it still fails to take seriously the state's duty to actively rehabilitate prisoners. Thus, rather than reading, for example, *Kang v. Korea* as a repudiation of Article 10(3)'s importance, it more clearly signals a lexical approach followed by the Committee. If a prison system does not respect inherent humanity and dignity of prisoners, it would be moot to assess whether it also violates their right to rehabilitation, as such a system always will.

Jensen v. Australia clearly indicates this key difference between Article 10(1) and 10(3) cases. It is true that "the practice of the committee in the reporting and individual complaints procedures give ample evidence that only few states parties can rightfully claim that they fully comply with the human right of all detainees and prisoners to be treated with humanity and dignity."²³ But the difference in the state's failure to uphold its duties between the two Paragraphs is significant. In *Jensen*, the complainant asserted that he had undergone intensive therapy and that his psychological assessments indicated a low risk of re-offending. He argued that continued imprisonment caused significant emotional and psychological distress.²⁴ The Committee acknowledged the existence of various programs within the state party's penitentiary system and concluded that the complainant had failed to substantiate that the state's assessment of his rehabilitation progress raised concerns about compliance with Article 10(3). As a result, the complaint was deemed inadmissible.²⁵

In *Dean v. New Zealand*, the Committee addressed the author's continued detention after completing the minimum ten-year preventive detention period. The complainant did not have a comprehensive release plan that would have outlined needed supervision and support to promote his integration into society after a long prison term. The case highlights the individual responsibility of a prisoner to also participate in rehabilitation processes, as the Committee notes that the complainant was responsible for producing such a plan but chose not to participate in certain rehabilitation programs crucial to this process. While acknowledging the state's duty to facilitate timely release of detainees under preventive detention, the Committee found that the prisoner's own actions may contribute to the delay in rehabilitation, as in the case of in formulating the release plan, which impeded consideration of his release. The HRC concluded that the complainant failed to demonstrate violations.²⁶

In one of the complaints that has led to a finding of a violation of Article 10(3), *Blessington v. Australia*, the focus was on two young offenders and their life sentences. The Committee found that Australia had failed to uphold its duties by de facto preventing release. HRC outlined that the review process should be thorough, considering the authors' concrete progress toward rehabilitation and justifying continued detention, particularly considering their age of fourteen and fifteen at the time of the offense. The Committee stressed that while release does not have to be guaranteed, it should remain a genuine possibility. A possibility ensured by domestic authorities assessing the circumstances comprehensively.²⁷ Such a holistic approach aligns with

²³NOWAK, *supra* note 14, at 254.

²⁴*Jensen v. Australia*, Commc'n No. 762/1997, Human Rights Comm., U.N. Doc. CCPR/C/71/D/762/1997, para. 3.5 (2001).

²⁵*Id.* at para. 6.4. See also *Jessop v. New Zealand*, Commc'n No. 1758/2008, Human Rights Comm., U.N. Doc. CCPR/C/101/D/1758/2008 (2011). In *Jessop*, of concern was length of the sentence for a juvenile delinquent. *Id.* The Human Rights Committee found the claims to be unsubstantiated in the context of New Zealand's penitentiary system. *Id.*

²⁶*Dean v. New Zealand*, Commc'n No. 1512/2006, Human Rights Comm., U.N. Doc. CCPR/C/95/D/1512/2006, para. 7.5 (2009).

²⁷*Blessington v. Australia*, Commc'n No. 1968/2010, Human Rights Comm., U.N. Doc. CCPR/C/112/D/1968/2010, para. 7.7 (2014).

the Committee's remarks on observations it made on the status of prisoners' rights in states. It has urged states "to develop rehabilitation programmes both for the time during imprisonment and for the period after release, when ex-offenders must be reintegrated into society if they are not to become recidivists."²⁸ It has also paid particular attention to prolonged confinement with limited out-of-cell recreation, usually conditions of strict regimentation in a depersonalized environment.²⁹

Alongside the practice of the HRC and its General Comments, the United Nations has also issued the Standard Minimum Rules (the Mandela Rules), which determine prisoners' fundamental rights. According to the Mandela Rules, the purpose of a sentence of imprisonment is primarily to protect society against crime and to reduce recidivism.³⁰ These purposes can be achieved only if the period of imprisonment is used to ensure, as much as possible, the reintegration of prisoners into society so that they can lead law-abiding and self-supporting lives.³¹ The treatment should be directed to that aim as the length of the sentence permits and should encourage prisoners' self-respect and develop their sense of responsibility.³² The prison regime should seek to minimize differences between prison life and life in open society that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.³³ Further, the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it.³⁴

The fulfilment of these principles requires individualization of treatment.³⁵ As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a program of treatment shall be prepared for them in the light of the knowledge obtained about their individual needs, capacities, and dispositions.³⁶ All appropriate means shall be used, including those of a remedial, moral, spiritual, social, health, and sports based nature; religious care—in the countries where this is possible; education; vocational guidance and training; social casework; employment counselling; physical development; and strengthening of moral character. Further, these means should be deployed in accordance with the individual needs of each prisoner, taking account of their social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of their sentence and prospects after release.³⁷

As such, there is wide recognition on the international level for rehabilitation of prisoners. Some of these international rules might have reached the threshold of customary international law, that is, they might apply even in those states that have not joined the relevant treaties. Alongside customary norms, there is a wide range of statutory and soft law instruments that promote right to rehabilitation. The International Covenant on Civil and Political Rights obliges states to provide prisoners with rehabilitation and social reformation, and the Human Rights Committee has provided further explanations on what such rehabilitation should entail. The United Nations Standard Minimum Rules stress the importance of individualized treatment and the need for rehabilitation programs for prisoners during and after their imprisonment. In practice, the effective implementation of the right to rehabilitation is primarily concerned with the development and implementation of customized programs that align with the specific needs of

²⁸Human Rights Comm., U.N. Doc. CCPR/C/79/Add.99, para. 19 (Nov. 19, 1998) ("Consideration of Reports Submitted by States Parties Under Article 40 of the [ICCPR]: Concluding observations of the Human Rights Committee.").

²⁹PAUL M. TAYLOR, A COMMENTARY ON THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 315 (2020).

³⁰G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Rule 4(1) (Dec. 17, 2015).

³¹*Id.*

³²*Id.* at Rule 91.

³³*Id.* at Rule 5(1).

³⁴*Id.* at Rule 88(1).

³⁵*Id.* at Rule 89(1).

³⁶*Id.* at Rule 94.

³⁷*Id.* at Rules 4(2), 92(1).

the corresponding prisoner within the penitentiary system. A significant emphasis is placed on the individualized assessment of each prisoner and the individual planning of their sentence to ensure successful rehabilitation outcomes.

C. Prisoners' Right to Rehabilitation Under the Council of Europe System

The rehabilitation right is an important aspect of the human rights of prisoners, which is also recognized in various international human rights instruments under the Council of Europe system. One of the most important of these is the European Prison Rules, which outline the minimum standards for the treatment of prisoners. The Rules state that rehabilitation is an essential purpose of imprisonment and the prison management should prioritize the successful reintegration of prisoners into society and the regime shall be designed to assist and enable them in living responsible, law-abiding and crime-free lives.³⁸ Other authoritative guidelines, such as the recommendation on the management by prison administrations of life sentence and other long-term prisoners and recommendation on conditional release—parole—also encompass significant components of the right to rehabilitation.

In Europe, the European Convention on Human Rights also indirectly protects the right of prisoners to rehabilitation, and the European Court of Human Rights has played a significant role in interpreting and enforcing this right. The ECtHR has consistently acknowledged that rehabilitation is a fundamental component of human dignity, and that states have a positive obligation to provide rehabilitation within the framework of the prohibitions on torture and inhuman or degrading treatment or punishment under Article 3, the right to liberty and security under Article 5, and the right to respect for their private and family life under Article 8 of the Convention.³⁹

In its case-law, the European Court of Human Rights has emphasized the historical development of the goals of punishment, including the place, role, and importance of rehabilitation. The Court has indicated that the criminal justice system has traditionally focused on punishing offenders for their crimes, with functions such as retribution, prevention, and protection of the public taking center stage. However, in recent years, there has been a shift towards placing more emphasis on rehabilitation as a means of reducing recidivism and promoting re-socialization, as demonstrated notably by the Council of Europe's legal instruments.⁴⁰

ECtHR highlighted that imprisonment cannot be used in the absence of legitimate penological justifications, including punishment, deterrence, public safety, and rehabilitation. Although many of these grounds may be presented at the time of sentencing, the balance between these justifications is not necessarily static. As a result, the primary justification for detention that may have prevailed at the sentence's commencement may not hold the same significance after an extended period of incarceration.⁴¹ Additionally, European Court declared that:

While rehabilitation was recognised as a means of preventing recidivism, more recently and more positively it constitutes rather the idea of re-socialisation through the fostering of personal responsibility. This objective is reinforced by the development of the "progression principle": in the course of serving a sentence, a prisoner should move progressively through the prison system thereby moving from the early days of a sentence, when the emphasis may be on punishment and retribution, to the latter stages, when the emphasis should be on preparation for release.⁴²

³⁸Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, COUNCIL EUR. (Jan. 11, 2006), Rules 6, 102(1).

³⁹See generally Sonja Meijer, *Rehabilitation as a Positive Obligation*, 25 EUR. J. CRIME, CRIM. L. & CRIM. JUST. 145(2017).

⁴⁰Dickson, App. No. 44362/04 at para. 28, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-83788%22%5D%7D>; Murray, App. No. 10511/10, para 70 (Dec. 4, 2007).

⁴¹Vinter, 2016-III Eur. Ct. H.R. 317 at para. 111.

⁴²Dickson, App. No. 44362/04 at para. 28; Murray, App. No. 10511/10 at para. 70.

The European Court of Human Rights clearly stated that “the emphasis on rehabilitation and reintegration has become a ‘mandatory factor’ that member states need to take into account when designing their penal policies.”⁴³ In both European and international law contexts, there exists a definitive endorsement of the notion that all prisoners, including those serving life sentences, should be provided with opportunities for rehabilitation, and subsequently be afforded the possibility of release upon successful rehabilitation.⁴⁴ The exploration of prisoners’ right to rehabilitation within the framework of the European Convention on Human Rights originated in cases involving life-term prisoners. The ECtHR has addressed several instances of life imprisonment without parole under Article 3 of the Convention, beginning with the *Kafkaris* and *Vinter* cases.⁴⁵ The Court’s case law further developed in *Murray v. Netherlands*, which emphasized the necessity for the practical reducibility of life sentences.⁴⁶ In its most recent ruling, *Bancsok v. Hungary* (No. 2), the European Court found that requiring applicants to wait forty years before their progress towards release can be reviewed is indicative that their life sentences cannot be considered reducible under Article 3.⁴⁷ This extended waiting period unreasonably delays domestic authorities’ assessment of whether significant changes in the prisoner serving a life sentence and progress towards rehabilitation justify continued detention beyond what is justifiable on legitimate penological grounds.⁴⁸ In its latest jurisprudence, the ECtHR has expanded upon the precedents discussed above by examining whether extradition to a country where an individual may face life imprisonment without the possibility of parole would constitute a violation of Article 3 of the Convention. In the case of *Sanchez-Sanchez v. United Kingdom*, the Grand Chamber established a two-stage test. Firstly, it must be determined whether the applicant has presented evidence capable of demonstrating substantial grounds for believing that, upon extradition and subsequent conviction, there is a real risk of receiving a sentence of life imprisonment without parole.⁴⁹ Secondly, it must be verified whether, from the time of sentencing, there exists a review mechanism that enables domestic authorities to assess the prisoner’s progress towards rehabilitation or any other grounds for release based on their behavior or relevant personal circumstances.⁵⁰

Whilst acknowledging the state’s positive obligation to guarantee the rehabilitation and resocialization of incarcerated individuals, there remains a lack of clarity surrounding the precise components of rehabilitation. The present declarations are highly abstract and do not offer concrete guidance for implementing effective rehabilitative policies within correctional facilities. As the purpose of the European Convention is to ensure that the rights it guarantees are not theoretical or illusory, but rather, they are practical and effective,⁵¹ in its jurisprudence, the ECtHR has established several principles regarding the right to rehabilitation of prisoners. The Court has emphasized the importance of individualized treatment that considers the specific needs and circumstances of each prisoner. The Court states that prisoners serving life sentences should be provided with an opportunity to rehabilitate themselves. Prisoners serving life sentences must be realistically enabled to make progress towards rehabilitation with the aim of eventually becoming eligible for conditional release or parole. While it is not the responsibility of States to achieve the

⁴³*Khoroshenko v. Russia*, App. No. 41418/04, para. 121 (2015), <https://hudoc.echr.coe.int/fre?i=001-156006>.

⁴⁴*Vinter*, 2016-III Eur. Ct. H.R. 317 at para. 114.

⁴⁵*Vinter*, 2016-III Eur. Ct. H.R. 317; *Kafkaris v. Cyprus*, App. No. 21906/04 (2008), <https://hudoc.echr.coe.int/eng?i=001-85019>.

⁴⁶*Murray*, App. No. 10511/10 at para. 92.

⁴⁷*Bancsok v. Hungary* (No. 2), App. Nos. 52374 & 53364/15, para. 47 (2021), <https://hudoc.echr.coe.int/fre?i=001-220001-212669%22>.

⁴⁸*Id.*

⁴⁹*Sanchez-Sanchez v. United Kingdom*, App. No. 22854/20, para. 97 (Nov. 3, 2022), <https://hudoc.echr.coe.int/eng?i=001-220001-220484%22>.

⁵⁰*Id.*

⁵¹See *Gäffen v. Germany*, App. No. 22978/05, para. 123 (2010), <https://hudoc.echr.coe.int/eng?i=001-99015>.

rehabilitation of prisoners, it is their duty to create an environment that enables them to rehabilitate themselves. This could be achieved, “by setting up and periodically reviewing an individualised programme that will encourage the sentenced prisoner to develop himself or herself to be able to lead a responsible and crime-free life.”⁵²

In his separate opinion in *Murray v. Netherlands* and joining Judge Turkovic in *Khoroshenko v. Russia*, Judge Pinto de Albuquerque emphasized the positive obligation of states to promote rehabilitation by providing an individualized sentence plan that includes a comprehensive and updated assessment of the prisoner’s risks and needs.⁵³ This individualized approach is considered a central pillar of a rehabilitation-oriented prison policy.⁵⁴ Under an individualized sentence plan, the prisoner’s health care, activities, work, exercise, education, and contacts with the family and outside world should be assessed⁵⁵ and should be coordinated with a range of detention conditions, material facilities, practical measures, and psychiatric, psychological, and other medical treatment.⁵⁶

In the case of *James v. United Kingdom*, the ECtHR underscored the importance of mitigating the risks that offenders pose to public security as a fundamental aspect of the rehabilitation process. The Court held that realization of rehabilitation necessitates providing prisoners with adequate opportunities to address their offending behavior and the associated risks they present.⁵⁷ In its deliberations on this matter, the Court went further when, based on the recommendation of the Committee of Ministers of the Council of Europe, it indicated that:

[C]omprehensive sentence plans should be developed for each individual prisoner, and should include a risk and needs assessment in order to inform a systematic approach to, inter alia, the prisoner’s participation in work, education, training and other activities that provide for a purposeful use of time spent in prison and increase the chances of a successful resettlement after release; and interventions and participation in programmes designed to address risks and needs so as to reduce disruptive behaviour in prison and re-offending after release.⁵⁸

In a recent article, Ailbhe O’Loughlin also posited that the European Court of Human Rights has construed prisoners’ right to rehabilitation as risk reduction.⁵⁹ O’Loughlin further contended that the court’s rulings in *Murray v. Netherlands* and *James v. United Kingdom* demonstrate the influence of the risk, need, and responsivity (“RNR”) model of offender rehabilitation, which is rooted in a cognitive social learning theory of criminal behavior premised on the causal connection between habits of thinking, learned behaviors, and offending.⁶⁰

Furthermore, the European Court of Human Rights has addressed the significance of adopting an individualized approach and conducting risk assessments when determining the appropriate regime and placement of prisoners within correctional institutions. In the case of *N.T. v. Russia*, the Court emphasized that the Government may opt to eliminate the automatic imposition of a strict regime for all life prisoners and instead implement provisions requiring that a strict regime be applied—and continued—based on an individualized risk assessment of each life prisoner, and

⁵²*Murray*, App. No. 10511/10 at paras. 103–04.

⁵³*Id.* at paras. 2–5 (Pinto de Albuquerque, J., concurring).

⁵⁴*Id.* at para. 3.

⁵⁵*Khoroshenko*, App. No. 41418/04 at para. 10 (Pinto de Albuquerque & Turković, JJ., concurring).

⁵⁶*Murray*, App. No. 10511/10 at para. 3 (Pinto de Albuquerque, J., concurring).

⁵⁷*James v. United Kingdom*, App. Nos. 25119/09, 57715/09 and 57877/09, para. 218 (Sep. 18, 2012), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-113127%22%7D>.

⁵⁸*Id.* at para. 161.

⁵⁹Ailbhe O’Loughlin, *Risk Reduction and Redemption: An Interpretive Account of the Right to Rehabilitation in the Jurisprudence of the European Court of Human Rights*, 41 OXFORD J. LEGAL STUD. 510, 515 (2021).

⁶⁰*Id.* at 517.

only for the duration necessary.⁶¹ Additionally, the Court highlighted the importance of mitigating the modalities of the strict regime, particularly those pertaining to physical restrictions, isolation of life prisoners, and their access to various activities aimed at socialization and rehabilitation.⁶²

Similar to the United Nations system, the execution of the imprisonment in accordance with the individual sentence plan is also reinforced in various recommendations within the framework of the Council of Europe. The European Prison Rule outlines the necessity for reports to be drafted for sentenced prisoners regarding their personal circumstances, proposed sentence plans, and strategies for their release preparation. It is encouraged for sentenced prisoners to participate in the creation of their individual sentence plans, which should include, as far as is practicable, opportunities for work, education, other activities, and preparation for release.⁶³ Additionally, social work, medical, and psychological care may be included.⁶⁴ Procedures should be in place to establish and regularly review individual sentence plans for prisoners, taking into account appropriate reports. The relevant staff should engage in thorough consultations with the concerned prisoners, who should also be involved to the greatest extent possible.⁶⁵

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) has emphasized the importance of individual planning, risks and needs assessment for the rehabilitation of prisoners in several reports.⁶⁶ The CPT further advocates for the establishment of individual treatment plans for each inmate.⁶⁷ Additionally, prisoners are encouraged to actively participate in the formulation of their treatment plans and the assessment of progress.⁶⁸ Regular reviews and updates to these plans are considered essential.⁶⁹

The second principle is intrinsically interconnected with the first. It has been determined by the European Court of Human Rights that prisoners are entitled to adequate medical, psychological, and psychiatric care, as well as access to educational and vocational training programs, occupational pursuits, and other activities that foster skill development and prepare for their eventual release from prison. Furthermore, the regulation of prison regimes and conditions is a crucial component of this principle.

The *Harakchiev v. Bulgaria* case highlights the detrimental impact of prison conditions and regime on the rehabilitation prospects of incarcerated individuals. The applicant in question was subjected to prolonged isolation and confinement within locked cells, with severely limited possibilities for social contact, education, or employment.⁷⁰ The European Court of Human Rights deemed the regime and inadequate living conditions to have severely impeded the applicant’s capacity to exhibit progress and potentially receive a sentence reduction.⁷¹ In *Khoroshenko v. Russia*, the Court emphasized the significance of the maintenance of family connections in

⁶¹N.T. v. Russia, App. No. 14727/11, para. 70 (June 2, 2020), <https://hudoc.echr.coe.int/?i=001-202633>.

⁶²*Id.*

⁶³*Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules*, COUNCIL EUR., paras 103.2-103.4 (Jan. 11, 2006), <https://search.coe.int/cm?i=09000016805d8d25> (including Commentary on the Recommendation).

⁶⁴*Id.* at Rule 103.5

⁶⁵*Id.* at Rule 104.2.

⁶⁶*See, e.g.*, COUNCIL EUR., REPORT TO THE SERBIAN GOVERNMENT ON THE PERIODIC VISIT TO SERBIA CARRIED OUT BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT) FROM 9 TO 19 MARCH 2021 para. 116 (2022); COUNCIL EUR., REPORT TO THE LATVIAN GOVERNMENT ON THE VISIT TO LATVIA CARRIED OUT BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT) FROM 12 TO 22 APRIL 2016 para. 113 (2017).

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹*Id.*

⁷⁰*Harakchiev v. Bulgaria*, App. Nos. 15018/11 & 61199/12, paras. 12, 23, 32 (July 8, 2014), <https://hudoc.echr.coe.int/fre?i=001-145442>.

⁷¹*Id.* at para. 266.

promoting the rehabilitation of incarcerated individuals.⁷² Rather than fostering and facilitating rehabilitation, the lack of family ties can pose a challenge to successful reintegration into society.⁷³ In the context of Article 8 of the Convention, the location of a prisoner's detention is pertinent to the State's duty to assist prisoners in establishing and maintaining connections with individuals outside of prison to support their social rehabilitation.⁷⁴ The geographical distribution of prisoners by the state should not be utilized to create distance between prisoners and their family members or to interfere with their private and family life.⁷⁵ The role and importance of medical, physiological, or psychiatric treatment or therapy for the realization of the right to rehabilitation was highlighted in the case *Murray v. Netherlands*. In *Murray*, the Court indicated that inmates should "be allowed to take part in occupational or other activities where these may be considered to benefit rehabilitation."⁷⁶ In the case of *James, Wells and Lee v. United Kingdom*, the European Court of Human Rights highlighted that offering prisoners access to courses or education specifically designed to help them in addressing their offending behavior and the associated risks is essential in providing them with a genuine opportunity for rehabilitation.⁷⁷

The CPT began emphasizing the significance of rehabilitative programs and purposeful activities as early as 1991. In the Second General Comment, the CPT declared that a "satisfactory program of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners."⁷⁸ This standard is consistently reflected in most of the CPT's reports, including those related to the monitoring of member states. As an illustration, in one of its reports, the CPT underscores the crucial importance of a satisfactory program of activities for the well-being of prisoners. This not only contributes to creating a more secure environment within prisons, but also stands as an indispensable element in the rehabilitation and resocialization of sentenced prisoners.⁷⁹ According to the CPT, the objective should center on ensuring that all prisoners have the opportunity to spend a significant portion of their day—ideally eight hours or more—outside their cells, engaging in purposeful activities tailored to the unique needs of each category of prisoner. These activities include work, preferably with vocational value, education, sport, and recreation/association.⁸⁰ The customization is vital, considering the diverse categories of prisoners, such as adult remand or sentenced prisoners, inmates with life sentences, those in special conditions of high security or control, female prisoners, juveniles, and others.⁸¹

In conclusion, it should be noted that the international standards established within the framework of the Council of Europe for the fulfilment of the positive obligation of prisoners' right to rehabilitation clearly indicate an individualized approach to the execution of punishment. The deprivation of liberty should adhere to an individual plan, wherein the treatment and intervention towards prisoners are based on a thorough assessment of their risks and needs. Furthermore, the state party bears the responsibility of ensuring rehabilitative programs and activities that are

⁷²Khoroshenko, App. No. 41418/04 at paras. 123, 144.

⁷³*Id.* at para. 144.

⁷⁴Khodorkovskiy v. Russia, App. Nos. 11082/06 & 13772/05, para. 837 (July 25, 2013), <https://hudoc.echr.coe.int/fre?i=001-122697>.

⁷⁵See Polyakova v. Russia, App. Nos. 35090/09, 35845/11, 45694/13 & 59747/14, para. 92 (Mar. 7, 2017), <https://hudoc.echr.coe.int/eng?i=001-171774>.

⁷⁶*Murray*, App. No. 10511/10 at para. 109.

⁷⁷See *James*, App. Nos. 25119/09, 57715/09 and 57877/09 at paras. 161, 218.

⁷⁸COUNCIL EUR., EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT), 2ND GENERAL REPORT ON THE CPT'S ACTIVITIES COVERING THE PERIOD 1 JANUARY TO 31 DECEMBER 1991 para. 47 (1992).

⁷⁹See COUNCIL EUR., REPORT TO THE CZECH GOVERNMENT ON THE VISIT TO THE CZECH REPUBLIC CARRIED OUT BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT) FROM 2 TO 11 OCTOBER 2018 para. 51 (2019)

⁸⁰*Id.*

⁸¹*Id.*

tailored to the individual interests of the prisoner, addressing their specific needs, and actively contributing to the reduction of risk factors.

D. Rehabilitation on a Micro and Macro Level

As we explore the discussion surrounding the right to rehabilitation for prisoners, it is essential to conduct a thorough examination of this fundamental human right through both micro and macro lenses. The micro-level analysis entails a close examination of individual prisoners' experiences and the details of rehabilitation designed to address their unique needs. Conversely, the macro-level examination extends our focus to include societal and systemic factors that affect the success of rehabilitation initiatives. This chapter is dedicated to shedding light on the specific dimensions of prisoners' right to rehabilitation, considering both the micro and macro perspectives.

Edgaro Rotman, a pioneer in this field, explored the conflicting models of rehabilitation. Rotman scrutinized the authoritarian and paternalistic model as a subtle iteration of the antiquated repressive approach to corrections.⁸² According to this perspective, correctional treatment serves as a technical tool to shape the personalities of offenders, ensuring their compliance with a predetermined set of thoughts and behaviors.⁸³ This version of "rehabilitation" is susceptible to being reduced to a mere instrument of institutional discipline, often resorting to brainwashing methods.⁸⁴

Building upon Rotman's insights, Amanda Ploch extends the discussion by emphasizing the broader societal impact of rehabilitation within the macro-level perspective. Ploch contends that this model of rehabilitation goes beyond its individual effects and serves as a mechanism to address deep-seated socio-economic inequalities.⁸⁵ According to this viewpoint, the significance of rehabilitation lies not merely in its impact on individuals but in its potential to rectify larger societal challenges. For instance, if factors such as low education levels and economic disparity contribute to criminal behavior, rehabilitation can play a pivotal role in mitigating these root causes. Rehabilitation intervenes at a systemic level, reducing the likelihood of recidivism and fostering positive ripple effects in society.⁸⁶

Ploch further draws connections between the macro-level understanding of rehabilitation and the Utilitarian perspective. In this analytical framework, the state conducts a thorough cost-benefit analysis to evaluate whether the social advantages resulting from rehabilitation, including enhanced employment opportunities, improved education, and reduced criminal recidivism, outweigh the costs associated with providing rehabilitative services.⁸⁷ While acknowledging the individual benefits reaped by prisoners undergoing rehabilitation, the Utilitarian approach, as discussed by Ploch, places a greater emphasis on societal interests, potentially overshadowing the significance of individual experiences.⁸⁸

Both Rotman's model of authoritarian/paternalistic rehabilitation and Ploch's previously discussed analytical framework prioritize societal interests over individual development. Within this framework, prisoners are viewed as a means to an end, a perspective that contradicts the principles of human dignity. While prisoners may receive certain benefits, the primary aim is geared towards advancing societal interests.⁸⁹ Consequently, relying solely on a macro-level understanding of rehabilitation proves insufficient in meeting the state's positive obligation.

⁸²Rotman, *supra* note 13, at 1025–26.

⁸³*Id.*

⁸⁴*Id.*

⁸⁵Amanda Ploch, *Why Dignity Matters: Dignity and the Right (or not) to Rehabilitation from International and National Perspective*, 44 N.Y.U. J. INT'L L. & POL. 887, 898 (2012).

⁸⁶*Id.*

⁸⁷*Id.* at 899.

⁸⁸*Id.*

⁸⁹*Id.*

On the contrary, Rotman considers a second model, characterized by a humanistic and liberty-centered understanding of rehabilitation. This model posits that meaningful change can stem only from the individual's personal insight, employing dialogue as a catalyst for self-discovery.⁹⁰ Unlike approaches relying on idealistic preaching to reintegrate offenders into a hostile society, humanistic rehabilitation provides inmates with a credible opportunity to rebuild their lives. This model strives to instill a profound awareness in inmates regarding their relationships with broader society, fostering a genuine sense of social responsibility.⁹¹ Crucially, the humanistic model of rehabilitation upholds the concept of prison inmates as holders of rights.⁹² This acknowledgment of their legal status cultivates feelings of self-worth and trust in the legal system. Moreover, it opens avenues for self-command and encourages responsible action within society. This approach seeks to empower individuals within the prison system, recognizing their inherent rights and facilitating a positive transformation grounded in personal responsibility.⁹³

The humanistic and liberty-centered model should be assessed as a micro level understanding of rehabilitation. By justifying prisoner rehabilitation based on the intrinsic characteristics of individuals, the emphasis shifts from quantifying tangible outcomes, like decreased recidivism rates, to prioritizing the initial provision of these services. In this perspective, macro-level cost-benefit analyses become secondary. While acknowledging the importance of celebrating any measurable positive effects resulting from rehabilitation, the primary focus lies on the inherent value of offering rehabilitation services to prisoners in the first place.⁹⁴ This micro-level understanding places significance on the qualitative aspects of the rehabilitation process, emphasizing the inherent rights and potential for positive transformation within each individual.

To thoroughly assess whether the state fulfils its positive obligation, the right to rehabilitation demands scrutiny from both a quantitative, macro-level perspective and a qualitative, micro-level standpoint. This comprehensive examination ensures a holistic understanding of the efficacy and quality of rehabilitation initiatives.

Following the example set in the recent methodological debate on comparative penology, it is imperative to simultaneously cover the quantity of rehabilitation and its modes, macro-level, and the experience of rehabilitation, micro-level. At the macro-level, the focus should be on numbers, modes, and resources allocated for rehabilitation—or what Nicola Lacey, David Soskice, and David Hope have termed the comparative political economy of penal policy.⁹⁵ To provide a fuller account of the experiences of those responsible for and subject to punishment and rehabilitation, quantitative analysis should be expanded with qualitative analysis through interviews and fieldwork in prisons. Through this, the quality of prison regimes should be assessed for those experiencing them, and, following the approach of Ben Crewe et al., attempt “to identify the mechanisms . . . that generate different kinds of penal experiences.”⁹⁶ This aspect is crucial, given the potential existence of an illusion in various states, where an attempt is made to portray the presence of humanistic macro-level penal policies. However, the execution of these policies at the micro-level may reveal a stark contrast, as they often remain unfulfilled in practice.

An in-depth examination of the right to rehabilitation, as outlined in international standards under the United Nations and Council of Europe systems, necessitates a dual perspective—from both macro- and micro-levels. While these components may appear as micro-level indicators,

⁹⁰Rotman, *supra* note 13, at 1026.

⁹¹*Id.*

⁹²*Id.* at 1037.

⁹³*Id.* at 1026.

⁹⁴Ploch, *supra* note 85, at 901–02.

⁹⁵Nicola Lacey, David Soskice & David Hope, *Understanding the Determinants of Penal Policy: Crime, Culture and Comparative Political Economy*, 1 ANN. REV. CRIMINOLOGY 195, 203 (2018).

⁹⁶Ben Crewe, Alice Ievins, Simon Larmour, Julie Laursen, Kristian Mjåland & Anna Schliehe, *Nordic Penal Exceptionalism: A Comparative, Empirical Analysis*, 63 BRIT. J. CRIMINOLOGY 424, 426 (2023).

there exists the potential for an illusion created at the macro level, where states may profess commitment to these principles without effective execution at the micro-level.

To ascertain whether the state fulfils the positive obligation defined in the UN and Council of Europe system and ensures the protection of prisoners' right to rehabilitation, it is essential to assess whether convicted persons are dealt with individually and categorized based on risks. As previously discussed, prisoners' rehabilitation necessitates the provision of individualized sentence plans and treatment programs tailored to the specific risks, needs, capacities, and circumstances of each inmate.

At the macro-level, it is crucial to evaluate whether individual treatment is mandated in domestic legislation and the extent of detail in its regulation. Specifically, from the perspectives of the government and prison administration, it should be examined whether the primary objectives of individual sentence planning solely aim to reduce disruptive behavior and recidivism or encompass broader goals to facilitate self-discovery, self-determination, and personal development to enable inmates to lead responsible, crime-free lives. Furthermore, it is essential to determine whether these principles of individualization extend to all categories of prisoners or only specific groups.

Moreover, comprehensive and updated assessment/measurement of risks and needs, along with adequate specialist personnel, including social workers and psychologists, to implement treatment plans effectively, must be considered. Additionally, the evaluation should consider whether the plan allows for the ongoing review and assessment of prisoners' progress. The inclusivity of various aspects such as work, education, training, and other activities, as well as healthcare, psychiatric, psychological, and other medical treatments is also crucial. In addition, the plan should include interventions and participation in programs designed to address risks and needs comprehensively.

At the micro level, direct analysis from prisoners' perspectives is vital due to potential disparities between legislative declarations and their real implementation. It is essential to gauge prisoners' sense of being cared for and treated as human beings, along with evaluating whether their time in prison and treatment programs foster self-determination and personal development. Understanding how prisoners perceive the impact of their sentence execution on personal development and reintegration into society is paramount. Additionally, assessing whether they have had the opportunity to participate in and influence the planning process is crucial. Furthermore, it is important to evaluate whether the individual sentence plan and the activities, treatments, and programs selected are adequate and responsive to the prisoners' risks and needs, aimed at empowering them. Conversely, if prisoners perceive that they are treated merely as numbers, statistics and risks by the prison administration, and if they feel that the prison environment seeks to transform them into individuals that they are not, then they may lack opportunities to influence their development and daily lives under such conditions.

On another note, evaluating existing security measures and control levels over prisoners is essential at both macro and micro levels. Ensuring the penal system minimizes discrepancies between prison and societal life, fostering prisoners' integration into the community, is imperative. Furthermore, in the context of long-term imprisonment, it becomes crucial for the penal process to be grounded not in stringent regimentation within a depersonalized environment, but rather in activities that promote engagement and development. This includes out-of-cell recreation encompassing educational opportunities, vocational guidance and training, work programs, sports and recreational activities, as well as facilitating contacts with the outside world, such as family, legal representatives, social and medical services, and non-governmental organizations.

Ultimately, the overarching goal is to assist prisoners in addressing their risks and needs while enhancing their capacities for successful reintegration into society. This involves creating a prison environment reflective of the outside world to ease prisoners' transition into law-abiding and productive individuals upon release.

In conclusion, the comprehensive examination of micro and macro levels is pivotal, exposing potential gaps between legislative and penal policy commitments and on-the-ground realities. This nuanced approach ensures a holistic evaluation of rehabilitation initiatives, considering both quantitative metrics and qualitative aspects. The illusion of adherence at the macro level becomes a focal point, urging states to bridge the gap between policy declarations and practical implementation.

E. Conclusion

In exploring the multifaceted dimensions of prisoners' right to rehabilitation, this Article has undertaken an in-depth analysis through both micro and macro lenses, shedding light on the intricate interplay between individual experiences and broader societal impacts. Scholars like Edgardo Rotman and Amanda Ploch have enriched our understanding by framing rehabilitation models and contextualizing their effects within larger societal structures.

The dichotomy between authoritarian/paternalistic and humanistic/liberty-centered models underscores the tension between institutional discipline and individual empowerment. At the macro level, rooted in Utilitarian considerations, rehabilitation addresses socio-economic inequalities and collective benefits, yet risks neglecting individual dignity from a human rights perspective.

Rotman's humanistic model emerges as a beacon at the micro level, emphasizing personal insight, dialogue, and the intrinsic rights of prisoners. This approach recognizes the inherent value of rehabilitation services beyond measurable outcomes, empowering individuals within the prison system and fostering a sense of responsibility and self-worth.

The call for a dual perspective—from both macro- and micro-levels—is imperative for a holistic evaluation of rehabilitation initiatives. While macro-level indicators provide a general picture and insights from the government and prison administration perspectives, it is equally important to consider the micro-level perspectives of prisoners. Their experiences and perceptions are crucial in assessing the effectiveness and quality of rehabilitation efforts.

This exploration reaffirms that prisoners' rehabilitation is a human right under international standards, imposing a positive obligation on states to ensure its fulfilment. It reveals potential gaps between legislative commitments and on-the-ground realities, underscoring the need for effective execution and resource allocation to uphold principles of human dignity.

In conclusion, the right to rehabilitation demands not only quantitative metrics but a qualitative assessment of empowerment within the prison system. Synthesizing micro and macro perspectives provides a nuanced understanding of rehabilitation efficacy. As we navigate the complexities of rehabilitation, a steadfast commitment is needed to align policy goals with genuine, humanistic practices, ensuring the right to rehabilitation is a tangible reality for every individual within the criminal justice system.

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